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Comments on Angola's *Presidential Decree No. 74/15* on the Regulation of Non-Governmental Organizations

On March 23, 2015, the President of Angola published Presidential Decree No. 74/15 ("the Decree") in the Official Gazette of the Republic of Angola. In response to requests from civil society partner organizations in Angola and concerned members of the international community, ICNL is pleased to offer the following analysis of the Decree. The Decree addresses the regulation of non-governmental organizations (NGOs) and raises several concerns regarding the ability of civil society to operate freely in Angola, including:

- **Mandatory and burdensome registration requirements** (Articles 7 and 8): National and international organizations are required to register with multiple authorities before they can operate. Registration involves submitting vaguely described documents such as 'clearance certificates' and a 'Declaration of suitability,' that are issued at the discretion of authorities. Registration is dependent on the 'validity' of this documentation, a term that is not sufficiently defined.
- **Excessive discretion and oversight of organizations' activities by authorities** (Articles 12, 18, 19 and 20): NGOs are required to undertake activities that take account align with the social and economic policies defined by the Government in a number of listed areas. They are subject to supervision by several sectoral and regional authorities. Authorities are permitted to determine the programs and projects NGOs should carry out and the location where they should be undertaken.
- **Severe funding restrictions** (Article 15): NGOs are required to ascertain whether or not funders are not under investigation for a range of crimes[1] and funding agreements are subject to approval by authorities.
- **Disproportionate penalties** (Articles 37 and 38): NGOs can be suspended for vaguely defined infractions such as 'harmful acts to the sovereignty and integrity of the Republic of Angola' or not performing for a period of two years 'activities beneficial to the community'.

Please note that this analysis does not attempt to discuss every issue raised by the Decree, but instead, to highlight some of the key areas of concern.

[1] Note that Angola received specific instructions to address deficiencies in it anti-money laundering and combating the financing of terrorism by the Financial Action Task Force (FATF), an intergovernmental policy. Indeed, FATF praised Angola for recent legislative efforts in this regard. See, http://www.fatf-gafi.org/countries/a-c/angola/documents/fatf-compliance-june-2015.html#Angola.

Legal Framework

Internationally, the right to freedom of association is enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic and Cultural Rights (ICESCR), and the International Covenant for Civil and Political Rights (ICCPR), among various other treaties, conventions and declarations. Article 22 of the ICCPR states that any interference with the freedom of association must be "prescribed by law," "necessary in a democratic society," and justified by one of four permissible "legitimate aims," namely: (1) the interests of national security or public safety, (2) the upholding of public order, (3) the protection of public health or morals, and (4) the protection of the rights and freedoms of others. Angola is a State Party to the ICCPR, having acceded to it on 10 January 1992. Angola is also party to other major global and regional human rights instruments that guarantee the right to freedom of association.[2]

Regionally, the freedom of association is protected by the African Charter on Human and Peoples' Rights (ACHPR), which provides that "[e]very individual shall have the right to free association provided that he abides by the law."[3] And on the national level, Article 48 of the Constitution of Angola provides for the right to freedom of association.[4]

Analysis

A. Mandatory registration

Issue: Chapter II of the Decree provides for the formation, enrolment and registration of NGOs, both national and international organizations. According to article 7, national NGOs must enroll (a term that is not defined or distinguished from the term 'registration' in the Decree) with the Institute for the Community Aid Promotion and Co-ordination (IPROCAC).

The registration process is subject to broad discretion.

Discussion: *(a) Mandatory registration*: According to the Decree, all NGOs **must** enroll or register with authorities but it is not clear what the implications of this procedure are. For example, the Decree does not indicate whether any benefits or burdens accrue to NGOs following the compulsory registration process.

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[2] Angola acceded to ICESCR on 10 January 1992; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 17 September 1986; the Convention on the Rights of the Child on 5 December 1990; the Convention on the Rights of Persons with Disabilities on 19 May 2014; the African Charter on Human and Peoples' Rights in 1990.

[3] Article 10.

[4] Article 48 reads as follows:

1) All citizens shall have the right to freely associate with one another without requiring any administrative authorisation, on condition that such associations are organised on the basis of democratic principles, under the terms of the law.
2) Associations shall pursue their purposes freely and without interference from the public authorities and may not be dissolved or have their activities suspended, except in cases prescribed by law.
3) No-one shall be obliged to belong to an association, or be coerced by any means to remain a member of one."
4) Any associations or groupings whose purposes or activities are contrary to the constitutional order, or which in cite and practice violence, promote tribalism, racism, dictatorship, fascism or xenophobia, in addition to any military, militarised or paramilitary-type associations, shall be prohibited.

The right to freedom of association necessarily entails that people should be at liberty to form associations without the obligation to register with the authorities.[5] The ability to freely form associations derives from the understanding that "freedom of association is a right, and not something that must first be granted by the government to citizens."[6] International human rights treaty bodies urge States to review legislative provisions that require mandatory registration of associations and that sanction "illegal" associations.[7]

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated, "the right to freedom of association equally protects associations that are not registered…Individuals involved in unregistered associations should indeed be free to carry out any activities…."[8]

Registration may appropriately be required for organizations to gain benefits such as legal personality or public utility status. However, it is not apparent that this is the intention of the law. The Decree provides at Article 6 that national NGOs "acquire legal personality under the law," without specifying which law or making reference to the enrolment and registration process. Similarly, according to Article 16 legally constituted NGOs may acquire "public utility status" in accordance with applicable legislation. There is no indication that the registration procedure stipulated in the Decree leads to acquisition of legal personality or public utility status.

Recommendation: Revise Chapter II of the Decree to make registration voluntary.

B. Burdensome registration process

Issue: International NGOs are required to register with the Ministry of Justice and Human Rights, and enroll with both the Ministry of External Relations and IPROCAC (articles 8-10).

All organizations are subject to a poorly defined vetting process.

Discussion: Registration processes should be in conformity with international human rights law including by being **voluntary**, simple, expeditious, non-discriminatory, transparent, and inexpensive. [9]

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[5] The Human Rights Committee (HRC) expressed concern that a law on public associations "severely restricts freedom of association in that it, inter alia, provides for the compulsory registration of public associations" CCPR/C/TKM/CO/1 (19 April 2012) para. 19. What did this involve? I think we have a more complete footnote on HRC rulings on this point somewhere . . .

[6] Public Interest Law Initiative, *Enabling Civil Society: Practical Aspects of Freedom of Association Source Book* (Budapest 2003), p. 14.

[7] See e.g. the Committee on the Rights of the Child which strongly urged a country to 'review its legislation on requiring mandatory registration of civil society organizations and its regime of sanctions against so-called "illegal" civil society actors and organizations" CRC/C/UZB/CO/3-4 (10 July 2013) para. 19.

[8] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 56, U.N. Doc. A/HRC/20/27 (21 May 2012); See also, Report submitted by the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 58/178 (1 October 2004) p. 21 U.N. Doc. A/59/401 ("[R]egistration should not be compulsory. NGOs should be allowed to exist and carry out activities without having to register if they so wish.").

[9] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para 57, U.N. Doc. A/HRC/20/27 (21 May 2012); See also, Committee on the Elimination of Violence Against Women (CEDAW) Concluding Observations on Uzbekistan, CEDAW/C/UZB/CO/4 (26 January 2010) para. 18.

International NGOs are required to register and enroll with three separate entities – the Ministry of Justice, the Ministry of External Relations and IPROCAC. The documents necessary to apply for registration and enrolment to all three agencies are largely the same, making the process repetitive but without clarity as to the purpose of each registration process. As with the enrolment process for national NGOs, authorities have 15 days to consider the suitability of the documentation presented and decide whether to register or enroll the organization, request supplemental or suitable documentation to be submitted within 10 days, or reject the application should the documentation not meet the required standards within this timeframe. The process is burdensome, repetitive and time consuming without a clear rationale as to the purpose of the various requirements.

For all organizations, the Decree foresees a vetting process for documentation submitted in applications for enrolment or registration (Article 8(3)), but does not explicitly specify objective grounds on which such vetting should be conducted, potentially providing wide discretion for authorities to reject documentation at each of the three stages of registration and enrolment. There is similarly no requirement for authorities to provide a written explanation in a situation where documentation is inadequate or where it is rejected. There appears no recourse to an appeal in case of rejection as guaranteed by Article 2(3) of the ICCPR.[10]

Although clear timelines for the approval or rejection of an application for enrolment are provided, the uncertainty surrounding what the verification process entails creates broad discretion which may be used to deny registration or enrolment.

Recommendation: 1) Amend the decree to streamline the application process for INGOs through one agency rather than several different authorities and create a vetting procedure that is objective and transparent; 2) clarify objective criteria that documentation requested should meet to facilitate registration or enrolment; and 3) provide a remedy if registration or enrolment is rejected.

C. Excessive oversight and control of NGOs activities

Issue: Articles 18, 19 and 20 subject NGOs to the supervision of the Government and gives the IPROCAC expansive powers to among other things: 1) coordinate, monitor, control and supervise NGO activities; 2) determine where activities should be carried out; and 3) audit NGO accounts.

Further, the Decree requires that associations align their activities to Government policies listed in the Decree.

Discussion: The right to freedom of association necessarily entails the ability of associations to identify and engage in activities of their choosing, without undue interference by authorities. "International law creates a presumption against any regulation or restriction that would amount to an interference in

[10] Article 2(3) provides: "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms are herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted."

recognized rights."[11] The African Commission on Human and Peoples' Rights (ACHPR) endorses the view that "Associations must be free to pursue a wide range of activities… Not only must the State not interfere with these rights, it must protect associations from others who might seek to interfere with them. The internal organization and activities of associations are a matter for the associations themselves, and the authorities must not interfere with them or violate associations' right to privacy."[12] The Human Rights Committee has expressed concern about legislation that withdraws legal status from associations for non-compliance with sectoral policies or involvement in activities other than those referred to in their statutes.[13]

The Decree is in conflict with the prohibition against interference with the activities of associations because the law requires that associations align their activities to Government policies. Government policies are defined in a number of broad areas listed in the Decree. In principle, the enumeration of areas in which civil society can conduct activities implicitly restricts the freedom of association, because it is conceivable that there are areas in which associations may wish to engage that are not listed. For example, an NGO that would like to carry out advocacy on political issues such as electoral reform might not find its activities easily accommodated in any of the listed categories.

IPROCAC, in collaboration with other sectoral and regional Government agencies, enjoys expansive powers to among other things: 1) coordinate, monitor, control and supervise NGO activities; 2) determine where activities should be carried out; and 3) audit NGO accounts.

Such overarching control constitutes a severe intrusion into NGOs autonomy and independence to carry out activities of their choosing. Furthermore, the interference with the freedom of association fails to meet the standards outlined in international human rights law. It does not respond to any of the permissible legitimate aims allowed by the ICCPR - the interests of national security or public safety, the upholding of public order, the protection of public health or morals and the protection of the rights and freedoms of others.[14]

NGOs are typically subject to oversight internally - through their governance structures, and externally, by reporting to their membership, beneficiaries and funders. The sector may also collectively choose to establish mechanisms for self-regulation. Nevertheless, where organisations receive tax benefits or public funding it would be reasonable to require some public reporting on the use of funds. However, reporting requirements should not be burdensome or provide an opportunity for authorities to interfere with the operation of organisations or the sector.

Recommendations: Articles 18, 19 and 20 should be amended to ensure that NGOs have the freedom to choose their areas of activity and to execute its programming free of undue government intervention. .

D. Restrictions on foreign funding

Issue: Article 15 restricts access to funding of NGOs, specifically:

[11] ICNL and the World Movement for Democracy Secretariat at the National Endowment for Democracy, Defending Civil Society: A report of the World Movement for Democracy (2008), p.5.
[12] African Commission on Human and Peoples' Rights *Report of the Study Group on Freedom of Association and Assembly in Africa* (2014) para 16 (footnotes omitted).
[13] Human Rights Committee, Concluding Observations Bolivia, CCPR/C/BOL/CO/3 (6 December 2013) para. 24.
[14] ICCPR art 22(2).

i. NGOs must notify authorities of their available funding amounts and funding sources at the beginning of their activities;
ii. NGOs cannot receive funding from sources under investigation in Angola or outside the country for listed activities including money laundering, financing terrorism, among others;
iii. National and international NGOs can only receive funding from a foreign government if there is a bilateral agreement between that foreign government and Angola; and
iv. National and international NGOs can only receive funding from foreign NGOs if there is a written agreement approved by IPROCAC.

Discussion: These provisions create an environment where NGOs have limited autonomy to receive and utilize resources and to carry out their activities as they determine best to achieve their objectives.

Funding restrictions are a particularly potent means of inhibiting the effective operation of an association. The ability to seek, receive and utilize funding is a critical component of the right to freedom of association.[15] The Declaration on Human Rights Defenders affirms that "everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means… ."[16] The Human Rights Committee has observed that the right to freedom of association goes beyond the right to form an association; it protects all activities of an association.[17] Accordingly, fundraising activities are protected by article 22 of the ICCPR, and funding restrictions that impede the ability of associations to pursue their statutory activities constitute and interference with the right to freedom of association.

Article 15 of the Decree appears to restrict the rights of associations in ways that do not meet the high thresholds set in international human rights law. In particular, the Decree prohibits associations from receiving funding from sources under investigation in Angola or elsewhere for crimes and other illicit activities such as money laundering, financing terrorism and terrorism, tax evasion, trafficking of human organs or in human beings, bribery and corruption; all of which would in principle be legitimate limitations on the right to freedom of association. Most countries prohibit these activities in their Penal Codes and have established financial and legal systems to monitor, track and identify individuals and entities that engage in the prohibited activities and subsequently prosecute and punish them. However, there is no requirement that the association seeking, receiving or using funding from such prohibited sources should have knowledge of such ongoing investigation. According to article 15 of the Decree as long as such an investigation is underway, associations that receive funding from these sources run afoul of this provision. This places an enormous burden on associations to seek information on investigations, not only in Angola but in effect across the world; information that is often not available in the public domain for legitimate reasons aimed at facilitating investigations.

[15] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 56, U.N. Doc. A/HRC/23/39 (24 April 2013).
[16] General Assembly resolution 53/144, annex, art 13. See also, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, General Assembly resolution 36/55 art 6(f); Human Rights Council resolution 22/6 adopted 21 March 2013 calling upon States to ensure that reporting requirements "do not inhibit functional autonomy [of associations]" and "do not discriminatorily impose restriction on potential sources of funding".
[17] Human Rights Committee, communication No. 1274/2004, *Korneenko et.al v. Belarus,* views adopted on 31 October 2006, para. 7.2.

In order to safeguard the rights of associations, any prohibition on the ability to solicit, receive and utilize funding should be subject to an impartial judicial procedure, where the authorities present credible evidence that a funding source is engaged in prohibited activity. The government should bear the responsibility to demonstrate that a transfer of funds should be stopped because of an ongoing investigation; that should not be the responsibility of the receiving entity.

Article 15 of the Decree also enjoins NGOs from accepting funds from any person under investigation for "activities contrary to principles defended by the Angolan people or national sovereign bodies." This phrase is broad and vague, creating ambiguity and opportunities for the government to exercise discretion in determining what activities are prohibited. What are "principles defended by the Angolan people or national sovereign bodies?" Who determines them? Is there room to express disagreement with these principles?

NGOs can only access funding from a foreign government if a bilateral agreement exists between that government and the government of Angola. The requirement of a bilateral agreement between States is problematic because it essentially removes from an NGO the autonomy to choose funders and limits the pool of available funders to those with bilateral agreements with Angola. Similarly, requiring the prior approval by IPROCAC for funding agreements between NGOs in Angola and foreign NGOs severely constrains the freedom of association. The justification for such prior approval is unclear, and as such does not respond to the legitimate objectives set out in article 2(2) of the ICCPR.

Recommendation: Article 15 of the Decree that restricts access to funding should be deleted.

E. Disproportionate penalties

Issue: The Decree proposes severe penalties including involuntary termination and suspension:

i. If NGOs do not comply with provisions on access to funding (article 15(5));
ii. For non-compliance with a range of duties listed in article 23(3) such as failure to open a local bank account for project funds, failing to "promote, preserve and respect the traditional customs and habits" in the areas the NGOs operate, and not providing IPROCAC with a range of reports and projections for future activities;
iii. If NGOs do not perform for a period of two years activities that are beneficial to the community;
iv. If NGOs deviate from the purpose for which they were established; or
v. To allow for verification of whether their purpose or mission is "pursued through illegal or immoral means." (Articles 37 and 38)

NGOs are also liable for unspecified civil and criminal liabilities.

Discussion: Penalties such as suspension and termination of activities of NGOs constitute a severe punishment and are disproportionate for non-compliance that can be remedied by other means.

The Decree prescribes suspension of an NGO's activities for failing to comply with a wide range of responsibilities, including some duties that would be better left to the discretion of NGOs such as establishing partnerships. In addition, some of the obligations are vaguely described making it difficult for both the NGO and authorities to identify with precision what acts or omissions would contravene the law. For example, "activities beneficial to the community" might be understood differently by NGOs and authorities leading to self-restraint by NGOs in relation to associational activities or punishment for well-intentioned and legitimate activity.

Imposing such severe penalties for the infringement of these obligations fails to meet the high threshold set by international law standards. “The suspension and the involuntary dissolution of an association … should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law.”[18] The involuntary termination or suspension of an association’s activities "should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.”[19] In effect, suspension and involuntary termination should only be imposed as a last resort for the most serious violations of law.

In addition, there is neither indication of which entity is responsible for suspending or terminating an NGO for non-compliance, nor is a fair procedure set out by which the process of terminating or suspending should abide. Due process guarantees such as adequate notice of non-compliance, an opportunity to rectify non-compliance, an opportunity to be heard prior to imposition of the penalty as well as a right to appeal the decision, are not provided for in the Decree.

Recommendations: Amend the Decree to impose the suspension and involuntary termination of NGOs strictly in accordance with international law standards and to include appropriate procedural safeguards before the imposition of these penalties.

Conclusion

A number of problematic provisions in the Decree require urgent attention to bring them into accordance with international norms and best practices. We are hopeful that positive changes to the Decree will be made before it is implemented. ICNL stands ready and prepared to provide additional information or technical assistance upon request.

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[18] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para 75, U.N. Doc. A/HRC/20/27 (21 May 2012)

[19] ICNL and the World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A report of the World Movement for Democracy (2008), p. 31.*